

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:

WINTER RAYNE SOMMERS

Debtor.

Case No. 08-21689-B-13J

D.C. No. WRT-78

MEMORANDUM DECISION

The court has reviewed the creditor Cathay Bank's ("Cathay") Application for Hearing on Shortened Notice (the "Application") filed on February 25, 2008. (Dkt. 9 at 2).

Cathay seeks and order shortening time to set a motion for relief from the automatic stay brought under 11 U.S.C. § 362(d)(1) and (d)(4) (Dkt. 10) for hearing on or before February 28, 2008. As grounds for seeking shortened time, Cathay asserts that it must obtain relief from the automatic stay and a finding under Section 362(d)(4) before the court dismisses the bankruptcy case. (Dkt. 9 at 2). Cathay is concerned that the bankruptcy case will be dismissed on February 28, 2008 because the court issued a Notice of Incomplete Filing in this case on February 13, 2008 (Dkt. 3), which notice stated that if the debtor failed to file certain documents listed in the notice by February 28, 2008, "action will be initiated to dismiss the case."

1 The Application will be denied. Cathay's fears that the
2 case will be dismissed on February 28, 2008 are unfounded. The
3 Notice of Incomplete Filing states that if the documents are not
4 filed by February 28, 2008, action will be initiated to dismiss
5 the case. In this district such action takes the form of an
6 order to show cause, which is generated by the clerk's office if
7 the missing documents are not filed by the deadline specified in
8 the Notice of Incomplete filing. The order to show cause is
9 served on the debtor and is set for a hearing.

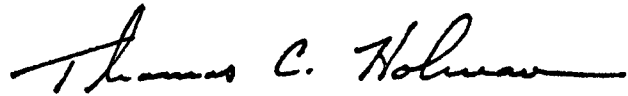
10 Here, the deadline for satisfying the notice of incomplete
11 filing has not passed and no order to show cause has been
12 generated, served on the debtor, or set for a hearing.
13 Furthermore, this is a chapter 13 case. If an order to show
14 cause is generated soon after February 28, 2008, it is likely to
15 be set for hearing on the court's chapter 13 calendar on March
16 18, 2008 at 9:30 a.m. at the earliest, the same day that movant
17 self-set its motion for relief from the automatic stay.

18 The case will also not be automatically dismissed pursuant
19 to 11 U.S.C. § 521(i) prior to March 18, 2008 if the debtor fails
20 to file schedules or statements that constitute information
21 required by 11 U.S.C. § 521(a)(1). This case was filed on
22 February 13, 2008. Taking into account the automatic extension
23 of time provided by Federal Rule of Bankruptcy Procedure 9006(a),
24 the forty-fifth day for the purposes of 11 U.S.C. § 521(i) is
25 March 31, 2008. This case cannot be automatically dismissed
26 prior to that date.

1 Furthermore, Cathay's fear that if the case is dismissed
2 this court will lack jurisdiction to make a finding under 11
3 U.S.C. § 362(d)(4) is also unfounded. The court retains
4 jurisdiction to make a finding under 11 U.S.C. § 362(d)(4) despite the
5 dismissal of a bankruptcy case. See In re Johnson, 346 B.R. 190, 194
6 (9th Cir. BAP 2006); In re Menk, 241 B.R. 896 (9th Cir. BAP 1999).

7 The court will issue an order consistent with the foregoing
8 decision.

9
10 Dated: FEB 28 2008

11
12 

13 Thomas C. Holman
14 United States Bankruptcy Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

Winter Rayne Sommers
1296 E Gibson Rd #A
Woodland, CA 95776

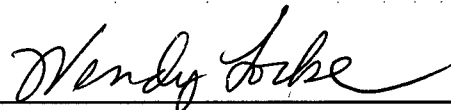
Wayne R. Terry
15910 Ventura Blvd 12th Fl
Encino, CA 91436

Jan P. Johnson
PO Box 1708
Sacramento, CA 95812

Office of the U.S. Trustee
Robert T Matsui United
States Courthouse
501 I Street, Room 7-500
Sacramento, CA 95814

DATED: 2/28/08

By:



Deputy Clerk

EDC 3-070 (New 4/21/00)